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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/616,202

07/09/2003

Susumu Kawashima

2552-000044

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12/30/2005

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EXAMINER

WARREN, DAVID S

ART UNIT

PAPER NUMBER

2837

DATE MAILED: 12/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/616,202

Applicant(s)

KAWASHIMA, SUSUMU

Examiner

David S. Warren

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4, 7 and 8 is/are allowed.
- 6) ☐ Claim(s) 5, 6, 9, 10 and 12 is/are rejected.
- 7) ☒ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/10/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 5, 6, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Kikuchi (6,143,973). Regarding claims 5 and 9, Kikuchi discloses the use of a request transmitting device (while Kikuchi is silent as to “a request for providing music data” the Examiner maintains that Kikuchi’s “play button” which plays music on download in quasi-real time, is the functionally equivalent to a request, i.e., requesting music to be downloaded and played), a receiving device (home computer, 9), temporal storage (Kikuchi discloses the use of buffers), Kikuchi states (see paragraph bridging cols. 9 and 10):

At Step SA5, the acquired MIDI event and the delta time and/or time stamp are sequentially stored in the transmission buffer 24a (FIG. 4A). If the MIDI event is the start event in the packet, the time stamp, delta time, and acquired MIDI event are stored in the transmission buffer 24a, whereas if not, the delta time and acquired MIDI event are stored in the transmission buffer 24a.

Buffers are generally known as temporary storage mediums. In a temporary storage medium, deletion is inherent. Kikuchi teaches the use of an input parameter device

Art Unit: 2837

(e.g., volume, balance, etc. – see col. 15, third and fourth paragraph). Kikuchi also teaches the use of a converter for converting music performance event data, e.g., voice data (the encoder, 5; col. 4, lines 3 – 8). Kikuchi discloses a storage device that stores data in an audio format (SC9, fig. 10). The Examiner maintains that any data in a temporary storage unit will be eventually deleted (thus making it temporary), the buffer regions of memory are temporary. Regarding claim 6, Kikuchi discloses the use of setting volume (col. 15, paragraph 3).

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 10 and 12 are rejected under 35 U.S.C. 102(a) as being anticipated by Morita (EPO publication EP 1,197,883 A1). Regarding claims 10 and 12, Morita discloses the use of a storage device (108, fig. 7) that stores a plurality of music data in a event data format (Morita discloses the use of formats in MP3, WAV, OpenMG, and ATRAC3), a music selection screen (see figs. 11, 12, 15, and 17), a music selection device (see fig. 22, first item in algorithm and step S12 – here the “files” are music files, see col. 17, paragraph [0127]), a music download setting screen (music is downloaded from either of servers 3, 4, in accordance with the computer GUI, or screen, see paragraph [0024]), a providing request receiving device (col. 5, lines 35 – 42), a converter (col. 5, paragraph [0023]; conversion formats included MP3, WAV, OpenMG,

etc.), and a transmission device (25). As interpreted by the Examiner, the “intermediary network” provides conversion via keys (or codec) – see paragraph [0024] – this appears to be functionally equivalent to transmitting pre-coded (or pre-converted) data since the server (i.e., or intermediary) is necessary for providing either a coded and/or conversion keys.

Allowable Subject Matter

4. Claims 1 – 4, 7, and 8 are allowed.

5. The following is a statement of reasons for the indication of allowable subject matter: The prior art does not disclose the use of an operator for designating whether conversion of the music data in a musical performance data format into music data in an audio data format is executed on the music data producing apparatus (i.e., server) or on the client terminal. In other words, as interpreted by the Examiner, the user may select whether the data (in a first format) is converted on the server or on the client to a second format.

6. Claim 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. See reasons stated supra regarding conversion on the client or server side of a transmission system.

Response to Arguments

Regarding claims 1 – 4, 7, and 8, the Applicant's arguments and amendments overcome the rejection outlined in the previous Office Action. Regarding claims 5 and 9, the Applicant argues that Kikuchi does not convert data. The Examiner maintains that anytime audio data is transmitted (via the Internet, land line, wireless, etc.) that conversion is necessary. Kikuchi discloses the use of A/D conversion (see elements 27b).

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David S. Warren whose telephone number is 571-272-2076. The examiner can normally be reached on M-F, 9:30 A.M. to 6:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on 571-272-2800 ext 37. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

dsw


MARLON T. FLETCHER
PRIMARY EXAMINER